

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18225.7. Made at the behest of.

(a) "Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code section 82031.

(b) Expenditures "made at the behest of" a candidate or committee include expenditures made by a person other than the candidate or committee, to fund a communication relating to one or more candidates or ballot measures "clearly identified" as defined at Title 2, California Code of Regs. section 18225(b)(1), which is created, produced or disseminated,

(1) After the candidate or committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication, or

(2) After discussion between the creator, producer or distributor of a communication, or the person paying for that communication, and the candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is agreement on any of these topics.

(c) An expenditure is presumed to be made at the behest of a candidate or committee if it is:

(1) Based on information about the candidate's or committee's campaign needs or plans provided to the expending person by the candidate or committee, or

(2) Made by or through any agent of the candidate or committee in the course of the

agent's involvement in the current campaign, or

(3) For a communication relating to a clearly identified candidate or ballot measure when: (A) The person making the expenditure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for that same election, or

(B) The communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate or committee.

(d) An expenditure is not made at the behest of a candidate or committee merely when:

(1) A person interviews a candidate on issues affecting the person making the expenditure, or

(2) The person making the expenditure has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agents, or

(3) The person making the expenditure has made a contribution to the candidate or committee, or

(4) The person making the expenditure is responding to a general, non-specific request for support by a candidate or committee, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure, or

(5) The person making the expenditures has invited the candidate or committee to make an appearance before the person's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure, or

(6) A person informs a candidate or committee that the person has made an expenditure,

provided that there is no other exchange of information, not otherwise available to the public, relating to details of the expenditure, or

(7) An expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.

(e) Notwithstanding any other provision of this section, if two or more committees exchange information between or among themselves, subsequent expenditures by each committee shall not, merely by reason of that exchange, be considered to be "made at the behest of" the other committee(s), where the committees are (i) all general purpose committees, (ii) all committees primarily formed to support or oppose the same candidate or candidates, or (iii) all committees primarily formed to support or oppose the same measure or measures.

(f) Throughout this section the terms "candidate" and "committee" include their agents, when the agent is acting within the course and scope of his or her agency. The term "expenditure" refers to a payment defined as an "expenditure" by Government Code section 82025 and Title 2, California Code of Regs. section 18225. A determination that an expenditure has been "made at the behest of" a candidate or committee does not establish that the expenditure is a "contribution" as defined by Government Code section 82015 or Title 2, California Code of Regs. section 18215. However, expenditures governed by Title 2, California Code of Regs. section 18550.1 may be treated as contributions pursuant to the provisions of that section.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025 and 82031, Government Code.

HISTORY

1. New section filed 11-7-95; operative 11-7-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 45).

2. Amendment of section and Note filed 4-9-2003; operative 4-9-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 15).